SINGAPORE REPORTS

THE "DAGNY SKOU"; SIM LIM CO. (PTE.) LTD. v. "DAGNY SKOU", OWNERS OF

[C.A. (Wee Chong Jin C.J., Kulasekaram & Chua JJ.) July 23, 1981]

[Singapore — Civil Appeal No. 9 of 1980]

Shipping Law — Carriage of goods — Damage to cargo — "Act, or neglect or default in the management of the ship" — Meaning of — United States Carriage of Goods Act 1936, s. 4(2)(a).

The appellants claimed for damages to their cargo of paper caused by the alleged negligence of the carriers of the said cargo. The facts revealed that the cargo which was put in the ship's hold was damaged by water. The respondents relied on section 4(2)(a) of United States Carriage of Goods by Sea Act 1936 (to the provisions of which the Bill of Lading was subjected). The learned trial judge held that the acts of negligence of the ship officers were such acts as really concerned the management of the vessel as a whole, and, therefore came within the express limitation in section 4(2)(a) of the United States Carriage of Goods by Sea Act, 1936.

The issue before the court was as to the meaning of "act, or neglect or default in the management of the ship."

Held, dismissing the appeal: (1) the word "management" is not a term of art; it has no precise legal meaning and its application depends on the facts, as appreciated by persons experienced in dealing with steamers;

(2) the whole operation carried out in reference to the two deep tanks was done in the interest of, and for the purposes of, the ship and was in the management of the ship. The negligence in the management of the pump was negligence in the management of the ship within section 4(2)(a) of the United States Carriage of Goods Act 1936.

Cases referred to:-

(1) *Suzuki & Co. Ltd.* v. *J. Beynon & Co. Ltd.* (1926) 42 T.L.R. 269, 274.

(2) *Minnesota Mining & Manufacturing (Australia) Pty. Ltd.* v. *The Ship "Novoaltaisk"* (1972) 2 N.S.W.L.R. 476.

(3) *Gosse Millard* v. *Canadian Government Merchant Marine, Ltd.* [1928] 1 K.B. 717.

(4) *The Glenochil* [1896] P. 10.

(5) *Rowson* v. *Atlantic Transport Co. Ltd.* [1903] 2 K.B. 666.

CIVIL APPEAL.

D.H. Murphy for the appellants.

G. Pannirselvam for the respondents.

Cur. Adv. Vult.

Chua J. (delivering the judgment of the Court): This appeal arises from a claim for damages to cargo by the appellants, Sim Lim Company (Pte) Ltd., the owners of the cargo, against the respondents, the carriers of the said cargo. The High Court dismissed the appellants' claim with costs.

The facts are not in dispute and they are these.

The appellants as owners or indorsees of the Bill of Lading dated October 10, 1973, and numbered 7, or persons entitled to delivery thereunder, of 192 reels of Pure Unbleached Sack Kraft Paper shipped on board the "Dagny Skou" (the ship) for carriage from Buenos Aires to Singapore claimed against the owners of the ship, the respondents, damages for breach of contract and for breach of duty and/or negligence of the respondents, their servants or agents in and about the loading, handling, care, custody, carriage, discharge and delivery of the said cargo.

The ship had five holds. Her bridge was at the stern. In No. 2 hold there were two deep tanks situated at the aft end of the hold next to one another and had a common bulkhead. Each tank had a hatch cover as well as a manhole and they were watertight when closed. To get into No. 2 hold there was a manhole on the main deck with a ladder leading down to the top of the 'tween deck. Each of the two deep tanks had a manhole giving access to the inside of the tank for the purpose of inspecting and/or cleaning it. The two deep tanks were used for carrying vegetable oil (cargo), or fuel oil (used for ship's propulsion) or dry cargo.

The ship left Argentina for Durban in October 1973, with linseed oil in the two deep tanks. The linseed oil was discharged at Durban, and the ship left Durban on November 1 with both the deep tanks empty and the hatches and manholes closed.

On November 2 both the deep tanks were filled with sea water. On or about November 5 the two deep tanks were emptied by a ballast pump. On November 7 the two deep tanks were half filled with sea water, chemicals added, and steam put on up to approximately 40°C. The next day sea water was put into each of the two deep tanks up to 95% of its capacity.

On November 10 the two deep tanks were emptied by pumping the water out and both the manholes were opened. About two or three men were in each manhole with hoses to clean and hose down the sides of the tanks. The tanks were emptied by pumping the water out. More chemicals were then put into each of the tanks and twenty tons of water was pumped into each tank for the chemicals to be mixed. (The starboard tank capacity was 410 tons, the other 370 tons). At 1700 hours on the same day, S. Sigaard, the Chief Engineer, received an order from the Master to pump water into the two deep tanks simultaneously till 1800 hours. Sigaard then passed on the order to the Second Engineer, who started to pump in the water with a pump whose capacity was 350 tons an hour. If the pump had been stopped at the end of the hour each tank would have reached approximately 175 to 180 tons. The purpose of this operation was to clean the tanks by the "rock and roll" method. However, the pump was not stopped at 1800 hours as had been ordered by the Master. At 2030 hours the Master came screaming down and told Sigaard that there was water in the No. 2 hold and that the ship was tilting forward. The Second Engineer, who was then beside Sigaard, rushed down to the engine room with Sigaard and the Master close on his heels. They saw that the pump was still pumping water into the two deep tanks. The pump was stopped immediately and two ballast pumps and one stripping pump were started to pump the water out into the sea. The cargo of paper in the No. 2 hold had been damaged by water and was clogging the pumps so that water was being pumped out fairly slowly. One hour later they started the vegetable

pump. Except for about 20 tons of water in each tank the rest of the water in the two deep tanks was in the 'tween decks.

On November 10 when the Master gave Sigaard the order to fill the two deep tanks with water the two manholes had been left open in order to facilitate the inspection of the level of the water in the tanks. If the manholes had not been left open the water would have gone on to the main deck via the vent pipes.

At the trial, the respondents, pleaded that "the United States Carriage of Goods by Sea Act, 1936, to the provisions of which the said Bill of Lading was subjected, by section 4(2)(a) provided (*inter alia*) that neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from act or neglect or default of the Master, Mariner or the servants of the carrier in the navigation or management of the ship. The damage was due to act, neglect or default of the servants of the carrier in the management of the vessel "Dagny Skou" for which the defendants are not liable by virtue of the provisions set out herein".

The trial proceeded on the single issue of whether the loss or damage arose or resulted from the act or neglect or default of the Master, Mariner or the servants of the respondents in the management of the ship.

The learned trial judge found that the two deep tanks were constructed for a dual purpose, one for carrying cargo and the other for carrying fuel oil for the propulsion of the ship.

The learned trial judge was of the view that "the actions of the Chief Engineer and those of the Second Engineer on November 10, 1973, in reference to the two deep tanks on board the ship, were acts of negligence of two officers of the "Dagny Skou" in the performance of their duties to the ship as a ship, not with regard to any particular cargo, and were such acts as really concerned the management of the vessel as a whole, and, therefore, in my opinion, really came within the express limitation in section 4(2)(a) of the United States Carriage of Goods by Sea Act, 1936" and he therefore dismissed the appellants' claim with costs.

At this appeal whether or not the neglect or default was in the management of the ship was argued before us and that is the only issue.

The question is what is the meaning of "act, or neglect or default in the management of the ship"? The word "management"' is not a term of art. Lord Sumner in *Suzuki & Co. Ltd.* v. *J. Beynon & Co. Ltd.*[1] explained that it has no precise legal meaning and its application depends on the facts, as appreciated by persons experienced in dealing with steamers. Macfarlan J. in *Minnesota Mining & Manufacturing (Australia) Pty. Ltd.* v. *The Ship "Novoaltaisk"*[2] considered the meaning to be attached to the word and he said (at p. 481):

"... in deciding whether the immunity exists the examination of the evidence should not necessarily be limited or confined to the particular act, neglect or default which caused the damage. I express this opinion in other words by saying that the incident which is the act, neglect or default must not be isolated, unless indeed the facts prove it was isolated, from the whole operation of which the incident formed a part."

In *Gosse Millard* v. *Canadian Government Merchant Marine, Ltd.*[3] Greer L.J., in a dissenting judgment which was afterwards approved by the House of Lords, laid down these three tests (at p. 744):

"In my judgment, the reasonable interpretation to put on the Articles is that there is a paramount duty imposed to safely carry and take care of the cargo, and that the performance of this duty is only excused if the damage to the cargo is the indirect result of an act, or neglect, which can be described as either (1) negligence in caring for the safety of the ship; (2) failure to take care to prevent damage to the ship or some part of the ship; or (3) failure in the management of some operations connected with the movement or stability of the ship or otherwise for ship's purposes."

In *The Glenochil*[4] after the arrival of the vessel at her port of destination and during the discharge of cargo it became necessary to stiffen the ship in order to keep the ship afloat in proper trim. It was held that the shipowner was protected from liability for damage caused by the negligent way in which the process of filling the water ballast tanks to stiffen the ship was carried out. It was held that the negligence complained of was negligence in the management of the ship.

Speaking of *The Glenochil,* Greer L.J. in the *Gosse Millard's* case said (at p. 744):

"That case is distinguishable from the present in that the act complained of was the negligent management of an operation done for the purposes of the ship, as a ship, and, as this negligence resulted in damage to the cargo, the ship was held to be protected by section 3 of the Harter Act. The negligence complained of was negligent treatment of the ship as a ship indirectly affecting the cargo....

(p. 745) If this is the correct way of describing the legal effect of the material words in the Harter Act, it seems to me to mean this, that the shipowner has to prove two things in order to bring himself within the protection of section 3: (1) that there was some act or neglect that can be described as want of care of the vessel, and (2) that damage to the cargo was indirectly caused thereby."

The next case to be considered is *Rowson* v. *Atlantic Transport Co. Ltd.*,[5] the authority referred to by the learned trial judge in support of his judgment. In that case the Court of Appeal held that carelessness in handling the refrigerating apparatus, which was installed in the ship partly to preserve the cargo, and partly to preserve the food used by the crew, resulting in damage to the cargo, amounted to a fault or error in the management of the ship. The court held that the apparatus must be regarded as being part of the ship, and that therefore the management of the apparatus was mismanagement of the ship so that the neglect to keep the chambers sufficiently cooled during the voyage was a fault or error "in the management of said vessel" and that the defendants were consequently excused. It is clear that the ground for the decision was that as the apparatus was used not merely for the purpose of preservation of the cargo but also for the purposes of the ship herself as a ship, the negligence was accordingly negligence in the management of the ship.

Applying the principles we have stated, we are of the view that the whole operation carried out in

reference to the two deep tanks was done in the interests of, and for the purposes of, the ship and was in the management of the ship. The negligence in the management of the pump was negligence in the management of the ship within section 4(2)(a) of the United States Carriage of Goods Act, 1936.

The appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Godwin & Co.; Drew & Napier.*

MALAYAN MOTOR AND GENERAL UNDERWRITERS (PTE.) LTD. v. ABDUL KARIM & ANOR.

[C.A. (Kulasekaram, Sinnathuray & D'Cotta JJ.) October 13, 1981]

[Singapore — Civil Appeal No. 46 of 1980]

Insurance — Marine Insurance — Indemnity — Claim for loss of missing timber — Vendors paid for loss to purchasers — Whether purchasers as assignees of marine policy could sue underwriters — Marine Insurance Act, 1906 (U.K.), s. 50(2).

Shipping Law — Bills of lading containing words "132 bundles said to contain 5,893 pieces of sawn Keruing Timber" — Letter of indemnity — Removal of words "said to contain" from bill of lading — Expedient method.

The plaintiffs purchased 5,893 pieces of sawn keruing timber from Pacific Corporation Traders (the vendors) on c.i.f. terms for shipment to Hodeidah on the vessel "Supreme Trader". Upon arrival and after discharge 1,768 pieces valued at $17,757.40 were found missing. The shipment was insured in the name of the vendors with the defendants under an all risks policy of marine insurance for US$25,734. When the loss was discovered, the vendors who had been paid by their Bank for the timber, for good business relationship, settled the plaintiffs' claim for the value of the missing timber.

The plaintiffs then brought the present action against the defendants under the policy for the value of the missing timber. At the trial the defendants contended that as the marine policy was a policy of indemnity, and as the plaintiffs had suffered no loss, their claim for the value of the missing timber having been settled by the vendors, the defendants were not liable under the policy. The said letter of indemnity was given to remove the words "said to contain" from the claused bill of lading: "132 bundles *said to contain* 5,893 pieces of sawn keruing Timber". The learned Chief Justice rejected the contention for the defendants. The defendants appealed.

Held, dismissing the appeal: (1) under section 50(2) of the Marine Insurance Act, 1906 of England which is applicable in Singapore, by the assignment, there was vested in the plaintiffs the beneficial interest in the said policy, and the plaintiffs were entitled, as they had done, to sue thereon in their own name. Hence, as the defendants had admitted the loss of 1,768 pieces of timber, and the value thereof was agreed between the parties, the learned Chief Justice properly gave judgment for the plaintiffs;

(2) the defendants erred in their contention that the plaintiffs by the settlement had been indemnified for the loss of the missing timber. Under the contract of indemnity the defendants had not paid any money to the plaintiffs to reduce the loss suffered by them;

(3) in this case there was no misrepresentation of any kind relating to the apparent condition of the timber by the removal of the words "said to contain" in the bill of lading. By the removal of those words the shippers and carriers were merely employing an expedient method of avoiding delay and overcoming a difficulty out of proportion to its importance had the carriers been required to check on the pieces of timber.

Cases referred to:-

(1) *Stearns* v. *Village Main Reef Gold Mining Co. Ltd.* 10 Com. Cases 89; (1905) 21 T.L.R. 236.

(2) *Brown Jenkinson* v. *Dalton* [1957] 2 Q.B. 621, 633.

CIVIL APPEAL.

D.H. Murphy for the appellants.

Haridass Ajaib for the respondents.

Cur. Adv. Vult.

Sinnathuray J. (delivering the judgment of the Court): When this action came on for hearing before the learned Chief Justice, no evidence was led as the parties had agreed on the following facts.

The plaintiffs purchased 5,893 pieces of sawn keruing timber from Pacific Corporation Traders (the vendors) on c.i.f. terms for shipment to Hodeidah on the vessel "Supreme Trader". Upon arrival and after discharge 1,768 pieces valued at $17,757.40 were found missing. The shipment was insured in the name of the vendors with the defendants under an all risks policy of marine insurance for US$25,734.

When the loss was discovered, the vendors who had been paid by their Bank for the timber, for good business relationship, settled the plaintiffs' claim for the value of the missing timber. There is this letter from the plaintiffs to the vendors which speaks for itself.

"Our Ref: CL/47

Date 20th May, 1976

Messrs Pacific Corporation Traders,
G.P.O. Box No. 1322,
Singapore.

Dear Sirs,

Re: Policy No. 1075C4607 per m.v. "SUPREME TRADERS"

We would be obliged if you could act for us and appoint solicitors in Singapore to recover our loss suffered as a result of short landing of 1811 pcs. of Sawn Timber. In view of our good business relationship, please also let us have a reduction of the Invoice by the said sum of $24,965.02. When you recover the said loss from the Insurance Company on our behalf you may retain this amount as due from us to you in your Invoice No. 786/110/307/75.

You may also come to best settlement with Insurance Company.

Thanking you,

Yours faithfully,
for ABDUL KARIM A.R. FARA & CO.,

(Sgd.) AMIN A.R. FARA ALASWADI
Managing Director."

The way the settlement was put through by the vendors was that they instructed their Bank who had purchased the bill of lading relating to the shipment to accept from the drawees in full settlement a lesser sum than the amount of the bill. The Bank having received from its correspondent Bank that lesser sum, the shortfall from the amount of the bill and the amount received was debited by the Bank to the account of the vendors.

The plaintiffs then brought this action against the defendants under the policy for the value of the missing timber. At the trial the defendants contended that as the marine policy was a policy of indemnity,